

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 23, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:08MD-092

MAUI

Cancellation of Governor's Executive Order No. 3403 and  
Reset Aside to Department of Land and Natural Resources,  
Division of Boating and Ocean Recreation for Ocean and  
Ocean-Related Recreational and Commercial Purposes and  
Issuance of a Management Right-of-Entry, Lahaina, Maui,  
Government Shores, Shore Waters and Submerged Lands of Tax  
Map Keys: (2) 4-4-1; 4-4-6; 4-4-8; 4-5-14; 4-5-21.

CONTROLLING AGENCY (of subject executive order):

Department of Transportation (DOT)

APPLICANT (requesting set aside):

Department of Land and Natural Resources (DLNR), Division of  
Boating and Ocean Recreation (DBOR)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government shores, shore waters and submerged lands of  
Lahaina, Maui, identified by Tax Map Keys: (2) 4-4-1; 4-4-6; 4-4-  
8; 4-5-14; 4-5-21, as shown on the attached map labeled Exhibit  
A.

AREA:

589 acres, more or less.

ZONING:

State Land Use District: Conservation  
County of Maui CZO:

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO \_\_\_\_\_x

CURRENT USE STATUS:

Governor's Executive Order No. 3403 setting aside 589 acres to  
Department of Transportation for ocean and ocean-related  
recreational and commercial purposes.

PURPOSE OF SET ASIDE:

Ocean and ocean-related recreational and commercial purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management  
jurisdiction and does not constitute a use of State lands or  
funds, and therefore, this action is exempt from the provisions  
of Chapter 343, HRS, relating to environmental impact statements.  
Inasmuch as the Chapter 343 environmental requirements apply to  
Applicant's use of the lands, the Applicant shall be responsible  
for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

None

BACKGROUND:

The Land Board at its meeting of July 22, 1988, under agenda item F-4, approved and amended its recommendation to the Governor the issuance of a set aside to DOT. The Kaanapali shores and shorewaters area, including the submerged land portions, are presently under the joint jurisdiction of DLNR and DOT. DLNR is responsible for the shores (beach area) and the submerged lands while the shorewater activities are regulated by DOT. The joint jurisdiction has created problems for both departments in regulating the many different types of beach and water activities taking place in the Kaanapali resort area. It has also created confusion for the public in determining which agency is responsible for enforcing the applicable laws and for addressing problems related to shore and shorewater uses and activities.

The subject area is heavily used by sunbathers, swimmers, fishermen, recreational, and commercial boaters and also for the anchoring and mooring of boats plus other ocean and ocean-related activities. This multiple and often times conflicting uses and activities have resulted in numerous complaints from the general public.

By having DOT responsible for the entire Kaanapali shores and shorewaters, including the submerged land portions, there will be a

safer and orderly use of the area.

The Governor on November 15, 1988 signed Executive Order No. 3403.

In 1991, the Sixteenth State Legislature passed House Bill No. 917 and the Governor signed into law Act 272 relating to the transfer of all functions, powers and duties involving the regulation of ocean recreational boating and coastal activities to DLNR.

To date, some of DOT's Executive Orders have been cancelled and reset aside to DBOR. DBOR staff continues to manage the small boat harbors facilities based on the authority of Act 272.

ANALYSIS:

There will be no change in the current use. The subject area will remain the same.

No agency or community comments were solicited.

Staff is recommending issuance of a right-of-entry permit. This will allow DBOR to continue management of the State property while staff completes the processing of the new Executive Order document.

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 3403 and subject to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Boating and Ocean Recreation under the terms and conditions

cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a management right-of-entry permit to the Division of Boating and Ocean Recreation covering the subject area, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

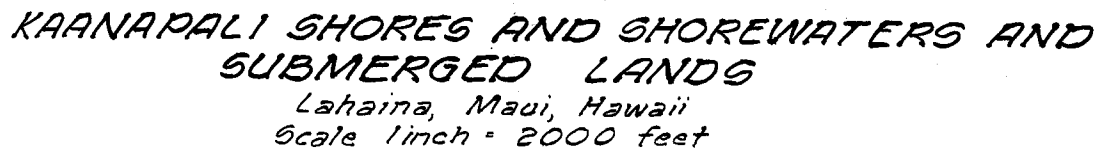
Respectfully Submitted,



Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson



WAJr: Aug. 8, 1988

# SESSION LAWS OF HAWAII

SIXTEENTH STATE LEGISLATURE



REGULAR AND SPECIAL SESSIONS OF 1991

EXHIBIT "B"

committee to be known as the Filipino  
have charge of all arrangements for  
sary of the arrival of the first Fil-  
ll be placed within the office of the  
ll cease to operate after June 30,

sation. The executive committee  
ed by the governor without regard  
o members shall be representatives  
ne remaining members shall repre-  
ll designate the chair of the execu-  
members. The members shall not  
shall be reimbursed for necessary  
in the performance of their duties

executive committee shall prepare  
h anniversary of the arrival of the  
t contributions to the development  
ulture and heritage. The executive  
ate the various program activities  
on and shall encourage the partici-  
ity. The executive committee shall  
oped by Filipino community orga-  
nizations or agencies from  
y designate special committees to  
or activities.

t to the governor a comprehensive  
ion which shall include, but not be

d distribution of books, films, and  
e life and experiences of Filipinos

res, and seminars; and  
ns, and other special events com-

g its responsibilities, the executive  
seek the advice from Filipino com-  
ganizations or agencies.

There is hereby created a trust fund  
nd which shall consist of payments  
All moneys received by the execu-  
ector of finance into the trust fund  
the purposes of this Act. Disburse-  
s issued in accordance with applica-  
ouchers signed by the chair of the

ants from public and private sources  
ects, programs, and activities of the

All property acquired by the executive committee shall be deposited for preservation in the state library system, museums, or public archives or shall otherwise be disposed of as directed by the executive committee.

**SECTION 7. Final report.** At the end of its term, the executive committee shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed.

**SECTION 8.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1991-1992, to carry out the purposes of this Act.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

**SECTION 9.** This Act shall take effect upon its approval; provided that section 8 of this Act shall take effect on July 1, 1991. This Act shall be repealed on June 30, 1992.

(Approved June 17, 1991.)



## ACT 272

H.B. NO. 917

A Bill for an Act Relating to the Transfer of All Functions, Powers and Duties Involving the Regulation of Ocean Recreational Boating and Coastal Activities.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature recognizes that the principal function of the department of transportation is to provide for the transportation of people and goods into, out of, and within the State.

The boating program with the objective of providing boating and other ocean-based recreation programs does not fit into the primary functions of the department although some elements are intertwined with certain commercial harbor facilities and activities.

The coastal areas program with the objective of preserving and enhancing the natural beauty and unique characteristics of coastal areas also does not fit neatly into the primary functions of the department.

The legislature finds that ocean-based recreation and coastal activities in Hawaii are now controlled in part by two different agencies: the department of transportation and the department of land and natural resources. The activities of boating and other ocean recreational activities and their impact on the marine environment are inseparable, and jurisdiction for recreational waterborne activities and protection of the marine life should rest in one department.

The regulation and development of ocean-based recreation and coastal area use would better be accomplished under the umbrella of one central agency.

The legislature further finds that the transfer of the boating and coastal areas programs from the department of transportation to the department of land and natural resources is appropriate, because the department of land and natural resources will be able to address the impact an activity may have on the marine environment when it regulates small boat harbors, boating, and ocean-based recreation activities.



The purpose of this Act is to establish the department of land and natural resources as the agency responsible for overseeing and administering the boating and coastal areas programs and to provide for the orderly transfer of the jurisdiction, functions, powers, and duties of the boating and coastal areas programs, from the department of transportation to the department of land and natural resources including the transfer of personnel, records, equipment, appropriations, and other property.

This Act also provides that in the interim between the Act's effective date of July 1, 1991, and July 1, 1992, a management team shall be selected by the director of transportation and the chairperson of the board of land and natural resources, with necessary staff hired by the director of transportation and the chairperson of the board of land and natural resources, to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, and attend to other administrative details so that the newly transferred functions and personnel can be initially operational on July 1, 1992.

SECTION 2. Effective July 1, 1992, the Hawaii Revised Statutes is amended by adding a new subtitle and a new chapter to be appropriately designated and to read as follows:

**"SUBTITLE . OCEAN RECREATION AND COASTAL AREAS  
CHAPTER  
OCEAN RECREATION AND COASTAL AREAS PROGRAMS  
PART I. GENERAL PROVISIONS**

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Beaches encumbered with easements in favor of the public" means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Shoreline" means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves.

§ -2 Board of land and natural resources, powers and duties. The board shall establish within the department a separate administrative unit which shall have the primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation.

§ -3 Ocean recreation and coastal areas programs. The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining



SECTION 22. Effective July 1, 1992, section 266-21.3, Hawaii Revised Statutes, is repealed.

SECTION 23. Effective July 1, 1992, Chapter 267, Hawaii Revised Statutes, is repealed.

SECTION 24. Effective July 1, 1992, Chapter 267A, Hawaii Revised Statutes, is repealed.

SECTION 25. Effective July 1, 1992, Chapter 267B, Hawaii Revised Statutes, is repealed.

SECTION 26. Effective July 1, 1992, Chapter 267C, Hawaii Revised Statutes, is repealed.

SECTION 27. **Plans and preparation for transfers.** The director of transportation and the chairperson of the board of land and natural resources shall appoint a management team and may hire necessary staff, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, to develop the appropriate transition plans, rework position descriptions, revise personnel classifications, develop an organizational structure, and attend to other administrative details so that the transfer of functions can be implemented on July 1, 1992.

SECTION 28. **Transfer of functions.** Effective July 1, 1992, the jurisdiction, functions, powers, duties, and authority heretofore exercised by the department of transportation pursuant to chapters 266 and 267, Hawaii Revised Statutes, relating to boating and other ocean-based recreational activities and coastal areas shall be transferred to and conferred upon the department of land and natural resources by this Act and shall be performed and enforced in the same manner as previously authorized, entitled, or obligated except as otherwise authorized, directed, or instructed by this Act.

The department of land and natural resources shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the department of transportation in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted by any law, contract, or other document.

All rules, policies, procedures, guidelines, and other material adopted or developed by the department of transportation to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect until amended or repealed by the chairperson of the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of transportation or director of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of land and natural resources or chairperson of the board of land and natural resources as appropriate.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of transportation pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect. Effective July 1, 1992, every reference to the department of transportation or the director of transportation therein shall be

construed as a reference to the department of land and natural resources or the chairperson of the board of land and natural resources as appropriate.

**SECTION 29. Transfer of personnel.** All officers and employees whose functions are transferred to the department of land and natural resources by this Act shall be transferred with their current functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of personnel services or the governor.

**SECTION 30. Transfer of records, equipment, appropriations, and other property.** Effective July 1, 1992, all records, equipment, files, supplies, contracts, books, papers, documents, maps, appropriations, and other property heretofore made, used, acquired, or held by the department of transportation in the exercise of the functions to be transferred by this Act shall be transferred with the functions to which they relate to the department of land and natural resources.

**SECTION 31. Enforcement by the marine patrol.** Pursuant to section 1 of Act 211, Session Laws of Hawaii 1989, the law enforcement and security functions and employees of the department of transportation shall be transferred to the department of public safety effective July 1, 1991. It is the intent of the legislature that the marine patrol, which is currently under the department of transportation and will be transferred to the department of public safety on July 1, 1991, shall be primarily responsible for the enforcement of boating, ocean recreational, and coastal area programs pursuant to chapter . The department of land and natural resources shall cooperate with the department of public safety to ensure the effective coordination of resource management, conservation, education, enforcement, and control with regard to the enforcement of chapter .

**SECTION 32. Federal aid, contract and bond obligations; not impaired.** It is the intent of this Act to neither jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

**SECTION 33. Use of state lands for the boating program.** All executive orders, revocable permits, easements, and rights of entry for the use of state lands issued and granted to the department of transportation for use in connection with the boating program shall be withdrawn or terminated and appropriate land dispositions for use in connection with the boating program may be made by the board of land and natural resources, as appropriate, subsequent to the transfer of the boating program to the department of land and natural resources.

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